

IC ANNUAL FOIA REPORT FY 2018

Please complete the following worksheet and return it to the NIH FOIA Office by 2:00pm, Thursday, October 18, 2018. NO EXTENSIONS WILL BE GRANTED

PART I - FOIA Contact Information

IC: *NIEHS – National Institute of Environmental Health Sciences*

Name of Person Completing the Report: *Regina Stabile*

Title: *FOIA Public Liaison and Privacy Act Coordinator*

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PART II – FOIA Request Data

- a. Number of FOIA requests pending at the end of FY 2018: *93* (This number was taken from the report you submitted last year)
- b. Number of FOIA requests received during FY 2018: *142*
- c. Number of FOIA requests processed during FY 2018: *82* (74 carried over from FY 17 and 59 FY 18 requests – see notes below about volunteer assistance from other IC's)*

** 82 requests processed during FY 2018*

- *32 of which with assistance from other IC's*
 - *23 of 74 carried over from FY 17, 12 of which with volunteer assistance from other IC's / NIH FOIA Office*
 - *59 of 142 received during FY 18, 20 of which with volunteer assistance from other IC's / NIH FOIA Office*
 - *Counts above include 32 "simple" requests transferred to other IC's or NIH FOIA Office for volunteer assistance (20 FY18 requests and 12 FY 17 requests)*
 - *5 non-grant/non-contract "simple" requests to NIH FOIA Office*
 - *17 grants/contracts to NIAID (15 as part of End of FY 18 push to close as many requests as possible)*
 - *10 grants/contracts distributed among 5 other IC's FOIA Offices, varying 1-3 requests per IC (NCI -2; NEI – 2; NHLBI – 3; NICHD -2; NIDA -1)*
- d. Number of FOIA requests pending at the end of FY 2018: *137 (3 from FY 16 with the NIH FOIA Office for processing*; 51 from FY 17; 83 from FY 18)*

** FY 16 cases with NIH FOIA Office (partial denials)*

- 44654 Slesin (FY 16, logged 1/22/2016 - sent to NIH FOIA Office on 12/20/2017)
- 45194 Simon (FY 16, logged 6/13/2016 - sent to NIH FOIA Office on 8/30/2017)
- 45303 Holloway (FY 16, logged 7/19/2016 - sent to NIH FOIA Office on 12/26/2017)

NOTE: a + b – c = d

PART III - Cost Information

A. Personnel

1. How many full-time FOIA staff does your IC have: an estimated average of 0.6 based on 0 for first half of FY 2018; 1.1 for second half of FY 2018; 3 as of 9/17/2018; 5 as of 10/01/2018
 - 1 full-time contractor FOIA Processing Support position (03/21/2018 – through present)
 - 2 full-time federal staff started on 9/17/2018 (2 vacant positions – 1 vacated in May 2017, the other was a new position authorized in June 2018)
 - 2 full-time federal staff started on 10/01/2018 (2 emergency hires authorized as part of Optimize NIH)
 - 1 full-time federal staff detailee for 4 months (approximately 12/04/2017 thru 04/03/2018)

NOTE: A “full-time FOIA employee” is a full-time employee or contractor who performs FOIA duties 100% of the time.

2. How many “Equivalent Full-Time FOIA Employees” work in your IC. **Provide this number in work years:** an estimated average of 1.6
 - The NIEHS FOIA Supervisor position is not a full-time FOIA position (other duties are specific to Privacy), but the NIEHS FOIA Supervisor has had to dedicate more than 1.0 FTE during all of FY 2018 in order to meet minimum FOIA obligations/priority needs due to increased volume of requests, increased litigation, and lack of staffing.
 - 1 part-time contractor position, doing approximately 0.5 FTE (approximately 06/2017 thru 02/15/2018)
 - 1 part-time contractor position, doing approximately 0.5 FTE (approximately 12/2017 thru 03/13/2018)
 - 2 part-time federal staff detailees for 4 months, each doing approximately 0.5 FTE (approximately 04/30/2018 thru 08/24/2018)

NOTE: Employees or contractors performing less than full-time FOIA duties are either a) part-time employees who perform FOIA duties all, or part, of the time, or b) full-time employees who perform FOIA duties less than 100% of the time.

To determine the number in work years, ask everyone who does FOIA on a part-time or occasional basis to estimate the amount of time - in percents - they spend on FOIA related duties. Each 100% equals one full-time equivalent. You should include contractors if they are working on some aspect of FOIA.

Example 1:

Employee 1 – performs FOIA duties 20% of her time
Employee 2 – performs FOIA duties 35% of his time
Employee 3 – performs FOIA duties 75% of his time
Employee 4 – performs FOIA duties 15% of her time

In this example, the FOIA duties of these employees equals 145% of the time ($20 + 35 + 75 + 15 = 145$) and **this IC would report 1.45 in this section** ($145/100 = 1.45$)

Example 2:

Employees 1, 2, 3 and 4 – perform FOIA duties 50% of their time
Employee 5 – performs FOIA duties 75% of his time
Employee 6 – performs FOIA duties 10% of her time

In this example the FOIA duties of these employees equals 285 % ($50 \times 4 + 75 + 10 =$) and **this IC would report 2.85 in this section** ($285/100 = 2.85$).

3. Total number of “Full-Time FOIA Staff” an estimated average of 2.2 based on 1.6 for first half of FY 2018; 2.7 for second half of FY 2018; 4.6 as of 9/17/2018; 6.6 as of 10/01/2018 (1 + 2 = 3).

B. Costs

1. Processing Costs - Cost to your IC for FOIA processing during FY 2018: \$272,314

- *FOIA Salaries FY 18 – \$112,192 (includes full salary for FOIA Supervisor and pro-rated salaries for 2 new staff during FY 18)*
- *FOIA Contractor costs FY 18 - \$148,440*
- *FOIAxpress costs FY 18 - \$7,138*
- *FOIA travel expenses FY 18: \$2,098*
- *FOIA office expenses (special equipment, not every day supplies) FY 18: \$2,446*

NOTE: Add together all costs expended by your IC for processing FOIA requests at both the initial request and the administrative appeal level. **Include salaries of FOIA personnel, overhead and any other FOIA-related expenses.** Salary information can be calculated by multiplying the annual salary of the employee by the percentage of time spent on FOIA (necessary to complete Section A). If your IC has a budget for your office, that may be a good source for this information.

2. Litigation Costs - Cost to your IC for FOIA litigation during FY 2018: \$28,624.95

FOIA litigation paid during FY 2018:

- \$2,700 for FY 18 (\$1,200 of which was paid during FY 18 for a case that settled in FY 17)
 - The Free Market Environmental Law Clinic and The Energy & Environment Legal Institute Litigation Costs – Civil Action No 17-051 – settled for \$1,200 during FY 2017, paid during FY 2018
 - The Free Market Environmental Law Clinic and The Energy & Environment Legal Institute Litigation Costs – Civil Action No 17-911 – settled for \$1,000 during FY 2018, paid during FY 2018.
 - The Free Market Environmental Law Clinic and The Energy & Environment Legal Institute Litigation Costs – Civil Action No 17-1452 – settled for \$500 during FY 2018, paid during FY 2018:

Notes:

There are 8 additional lawsuits still pending determinations (2 from FY 17 and 6 from FY 18 – one of the FY 17 cases 17-1917 had a settlement agreed to in early FY 19 for \$1,000 but has not yet been processed/paid)

It is not possible to estimate other personnel/overhead costs related to FOIA litigation – this was covered by regular personnel/overhead costs and those amounts are included in the above processing costs.

FOIA personnel costs during FY 2018:

- Approved Federal employee overtime costs FY 18 (FOIA Supervisor) - \$25,924.95
- FOIA travel specific to litigation FY 17 - \$0

Note: *FOIA Contractors costs are not listed under litigation costs, but it is worth identifying that contractors were hired to help with processing requests to prevent litigation and the current full-time contractor has been utilized fully since June 2018 working on litigation requests (primarily pulling and converting emails records responsive to litigation and appeal requests)*

NOTE: Add together all costs expended by your IC in litigating FOIA lawsuits. **Include salaries of FOIA personnel, overhead and any other FOIA-related expenses.** Salary information can be calculated by multiplying the annual salary of the employee by the percentage of time spent on FOIA litigation in addition to processing (necessary to complete Section A). Do **not** include processing time in this calculation.

3. Total Costs (add processing costs and litigation costs) ($1 + 2 = 3$):
\$300,938.95